

DEPARTMENT OF INSURANCE
By [Signature]

DEPARTMENT OF INSURANCE

Respondents.

PLEASE TAKE NOTICE, the pursuant to the provisions of A.R.S. § § 20-161 through 165 and 41-1061 et seq., the above captioned matter will be heard before the Director, or the Director's duly designated representative, on the 22nd day of August, 1995, at 9:00 a.m., at 2910 North 44th Street, Suite

1 210, Phoenix, Arizona.

2 Motions to continue this matter shall be made in
3 writing to the Administrative Law Judge not less than five
4 business days before the date set for the hearing. A copy of
5 any motion to continue shall be mailed or hand delivered to the
6 opposing party or attorney on the same date of filing with the
7 Department of Insurance. A.R.S. § 20-164 entitles any person
8 affected by this hearing to appear in person and by counsel, to
9 be present during the giving of all evidence, to have a
10 reasonable opportunity to inspect all documentary evidence, to
11 examine witnesses, to present evidence in support of the
12 person's interests, and to have subpoenas issued by the
13 Director to compel attendance of witnesses and production of
14 evidence in the person's behalf.

15 Question concerning issues raised in this Notice of
16 Hearing should be directed to Assistant Attorney General
17 KATHRYN LEONARD (602) 542-3702, 1275 West Washington, Phoenix,
18 Arizona, 85007.

19 NOTICE OF APPLICABLE RULES

20 On January 23, 1992, the Arizona Department of
21 Insurance adopted A.A.C. R20-6-101 through R20-6-115, setting
22 forth the rules of practice and procedure applicable in
23 contested cases before the Director of Insurance. The hearing
24 will be conducted pursuant to these rules.

25 PURSUANT TO A.A.C. R20-6-106 RESPONDENTS SHALL FILE A
26 WRITTEN ANSWER WITHIN TEN (10) DAYS AFTER ISSUANCE OF THIS

1 NOTICE OF HEARING AND SHALL MAIL OR DELIVER A COPY OF THE
2 ANSWER TO THE ASSISTANT ATTORNEY GENERAL DESIGNATED ABOVE. THE
3 ANSWER SHALL STATE RESPONDENTS' POSITION OR DEFENSE AND SHALL
4 SPECIFICALLY ADMIT OR DENY EACH ASSERTION IN THE NOTICE OF
5 HEARING. ANY ASSERTION NOT DENIED SHALL BE DEEMED TO BE
6 ADMITTED. ANY DEFENSE NOT RAISED IN THE ANSWER SHALL BE DEEMED
7 WAIVED. IF AN ANSWER IS NOT TIMELY FILED, RESPONDENTS SHALL BE
8 DEEMED IN DEFAULT AND THE DIRECTOR MAY DEEM THE ALLEGATIONS IN
9 THE NOTICE TO BE TRUE, AND TAKE WHATEVER ACTION IS APPROPRIATE,
10 INCLUDING SUSPENSION, REVOCATION, DENIAL OF A LICENSE, OR
11 DENIAL OR RENEWAL OF A LICENSE, IMPOSITION OF A CIVIL PENALTY
12 AND/OR ORDER RESTITUTION TO ANY PARTY INJURED.

13 The Department alleges:

14 1. Westside Insurance Agency, Inc. ("Westside") is
15 an Arizona Corporation currently licensed as a property and
16 casualty insurance broker by the State of Arizona (License No.
17 27279). Westside's license expires November 30, 1996.

18 2. David Lewis McFadden ("McFadden") is currently
19 licensed as a property and casualty insurance agent and broker
20 and life and disability agent by the State of Arizona (License
21 No. 274465). McFadden is an owner, President and CEO of
22 Westside. McFadden's licenses expire August 31, 1995.

23 COUNT I

24 3. On or about May 10, 1994, Westside issued Flynn
25 Cable a Certificate of Insurance. Westside never required an
26 application nor accepted premium from Flynn Cable for this

1 Certificate. The Certificate of Insurance indicates that Flynn
2 Cable had been issued a Binder for commercial general liability
3 insurance coverage through Colorado Casualty Insurance Company
4 ("Colorado Casualty") and commercial automobile insurance
5 coverage through Century-National Insurance Company
6 ("Century-National").

7 4. Flynn Cable included the Certificate of Insurance
8 in a bid package submitted to CableWorks, Inc. ("CableWorks"),
9 a general contractor, located in Baton Rouge, Louisiana.
10 CableWorks accepted Flynn Cable's bid.

11 5. On or about May 24, 1994, an employee of Flynn
12 Cable working on a job site in Baton Rouge, Louisiana, covered
13 by the bid, caused damage to the home of Ruth Comingore
14 ("Comingore"). Comingore submitted a claim to CableWorks for
15 damages and costs incurred totalling approximately \$5,000.00.

16 6. CableWorks attempted to contact Flynn Cable to
17 have the claim handled through Colorado Casualty. However,
18 Flynn Cable left the state of Louisiana and failed to return
19 telephone calls made to them by CableWorks.

20 7. On or about September 12, 1994, CableWorks
21 contacted Colorado Casualty and was notified that Flynn Cable
22 was not insured by Colorado Casualty. Westside never secured
23 the insurance coverage for Flynn Cable that was represented by
24 the Colorado Casualty binder Westside provided to Flynn Cable.

25 8. CableWorks subsequently contacted McFadden
26 regarding the Certificate of Insurance issued by Westside to

1 Flynn Cable. McFadden assured CableWorks that he would handle
2 the claim.

3 9. On or about November 9, 1994, Flynn Cable issued
4 their check number 2371, in the amount of \$2,900.00 to Westside
5 to go toward payment of the CableWorks claim.

6 10. On or about December 1, 1994, Westside issued their
7 check No. 21043 in the amount of \$2,900.00 to CableWorks for
8 payment of their claim.

9 11. On or about March 9, 1995, Westside issued their
10 check number 6073 in the amount of \$1,500.00 as additional
11 payment to CableWorks to settle their claim.

12 12. Subsequently, Westside issued their check in the
13 amount of \$4,400.00 to replace the other two checks forwarded to
14 CableWorks. This check effectuated settlement of the claim.

15 13. In December, 1994, CableWorks received a claim for
16 damages from Bellsouth Telecommunications ("Bellsouth") in the
17 amount of \$5,025.82. The claim was for damages caused by Flynn
18 Cable to Bellsouth's telecommunication lines during additional
19 work in Baton Rouge, Louisiana, covered by the Certificate of
20 Insurance Westside provided Flynn Cable.

21 14. Subsequently, CableWorks notified Flynn Cable,
22 McFadden and Westside of the additional claim.

23 15. Westside and McFadden have not accepted
24 responsibility for the Bellsouth claim. To date, the claim for
25 damages made by Bellsouth Telecommunications on CableWorks has
26 not been satisfied and is in dispute.

Count II

16. On or about December 20, 1994, McFadden received a \$45.00 cash down payment from Cody Dorman ("Dorman") for an automobile insurance policy through Guaranty National.

17. On that same date, McFadden had Dorman sign an application and a roadside service contract. McFadden represented that the roadside service contract was part of the insurance policy offered through Guaranty National.

18. On or about January 3, 1995, Westside received an additional \$53.00 from Dorman.

19. On or about January 9, 1995, Dorman notified Guaranty National that his vehicle had broken down and requested that his insurance policy be cancelled. Guaranty National told Dorman that they had received a \$63.00 down payment and that he would receive a refund of \$23.00.

20. On that same date, Dorman instructed Westside to cancel his policy and questioned Westside as to why Guaranty National only received \$63.00 when he had paid Westside \$98.00. Westside told Dorman that they had charged him a \$35.00 broker fee.

21. On or about January 20, 1995, Dorman filed a complaint against Westside with the Arizona Department of Insurance.

22. Subsequently, the Department contacted Westside regarding Dorman's complaint.

23. On or about February 22, 1995, Westside notified

1 the Department that Dorman had not been charged a \$35.00 broker
2 fee, but instead was charged \$35.00 for a six month road service
3 package through Roadside Motor Club.

4 24. McFadden and Westside failed to disclose to Dorman
5 that \$35.00 of the \$98.00 premium paid was to be utilized for the
6 roadside service contract.

7 25. Westside failed to forward Dorman's application
8 and/or funds to the Roadside Motor Club. Consequently, Roadside
9 Motor Club never received an application and/or monies from
10 Westside on behalf of Dorman.

11 26. To Date, McFadden and Westside have not refunded
12 Dorman's \$35.00.

13 Count III

14 27. On or about August 20, 1994, Westside received an
15 application and a \$58.00 down payment from Salvador Galindo
16 Villanueva ("Mr. Villanueva") for a one month automobile
17 insurance policy through Safeway Insurance Company ("Safeway").

18 28. On or about August 20, 1994, Westside also issued
19 Mr. Villanueva an insurance identification card ("ADOT card")
20 listing Safeway as insurer.

21 29. On that same date, Westside advised Mr. Villanueva
22 that they needed a copy of the driver's license for his wife,
23 Sofia Villanueva and had him sign a "Missing Information Form".

24 30. The Missing Information Form failed to notify Mr.
25 Villanueva of the number of days within which he was allowed to
26 return the form to Westside and what action would be taken if he

1 failed to return the form.

2 31. On or about August 23, 1994, Westside, acting
3 without authority from Safeway, issued a Notice of Cancellation
4 containing an invalid policy number to Mr. Villanueva for failing
5 to provide the information requested on his wife. The Notice of
6 Cancellation failed to provide Mr. Villanueva the statutorily
7 required notice of cancellation.

8 32. Pursuant to Safeway's underwriting guidelines and
9 producer agreement with Westside, Westside is not authorized to
10 bind coverage, accept premium or issue ADOT cards until an
11 application is completed in its entirety.

12 33. On August 27, 1994, four days after Westside mailed
13 Mr. Villanueva the cancellation notice, Westside mailed Mr.
14 Villanueva a renewal premium statement containing the same
15 invalid policy number as was contained on the cancellation notice
16 Mr. Villanueva received dated August 23, 1994. Contained within
17 that statement was a bill for \$58.00 for coverage due September
18 20, 1994.

19 34. On or about September 26, 1994, Westside accepted
20 Mr. Villanueva's check for \$56.00 for an additional month's
21 premium and issued Mr. Villanueva an ADOT card, listing Safeway
22 as the insurer with effective coverage dates September 26, 1994
23 thorough October 26, 1994.

24 35. On or about October 3, 1994, Westside received the
25 \$76.00 in premium which had been quoted to Mr. Villanueva to pay
26 for coverage to add Mr. Villanueva's second car, a 1982 Ford

1 Granada on to his existing policy until the end of the monthly
2 policy period, October 26, 1994. Westside provided Mr.
3 Villanueva with an ADOT card listing Safeway as the insurer with
4 effective dates of coverage of October 6, 1994 through October
5 26, 1994.

6 36. Westside never forwarded a complete application or
7 any premium on behalf of Mr. Villanueva on either vehicle to
8 Safeway although Westside continued to accept Mr. Villanueva's
9 payments.

10 37. On October 15, 1994, while near Payson, Mr.
11 Villanueva was involved in an automobile accident at 11:40 a.m.

12 38. Mr. Villanueva contacted Westside when he returned
13 to Phoenix to inform Westside of the accident.

14 39. After being informed of the accident, and because
15 Mr. Villanueva had no coverage through Safeway, Westside created
16 an application for Mr. Villanueva showing the application date as
17 October 15, 1994 and United Southern Assurance Company ("United
18 Southern") as the insurer. The application purports to have been
19 completed at 8:15 a.m. The application also contains a signature
20 purporting to be of Mrs. Villanueva, when in fact, the signature
21 is not hers and the spelling of her name is incorrect.

22 40. On or about October 20, 1994, Four Corners General
23 Agency ("Four Corners"), the managing general agent for United
24 Southern, received an application dated October 15, 1994 and
25 premium in the amount of \$73.00 to bind a policy for Mr.
26 Villanueva for six months.

1 41. On or about October 19, 1994, Westside submitted a
2 finance contract to Dwight Financial for Mr. Villanueva, showing
3 a downpayment of \$73.00 and four monthly installments due of
4 \$59.70 on the United Southern policy. Neither Mr. nor Mrs.
5 Villanueva knew a policy had been financed nor did either tender
6 this downpayment to Westside.

7 42. Westside created both the application and finance
8 contracts utilizing an address where the Mr. Villanueva's no
9 longer lived, consequently, the payment book from Dwight
10 Financial never reached Mr. Villanueva. He had no notice that
11 policies had been financed in his name.

12 43. On or about October 22, 1994, Dwight Financial
13 received \$53.00 to add the Granada to the finance contract.

14 44. On or about January 2, 1995, Dwight Financial
15 received \$58.00 from Westside as a payment on Mr. Villanueva's
16 finance contract.

17 45. On or about February 3, 1995, Dwight cancelled Mr.
18 Villanueva's policy for non-payment of premium.

19 46. On or about May 12, 1995, Westside completed an
20 Safeway application for Mr. Villanueva for one months coverage on
21 the 1982 Granada. Westside accepted premium in the amount of
22 \$100.00. The policy application to United Southern shows the
23 premium required to institute the policy was \$65.00.

24 47. Westside claims that it applied the remaining
25 \$35.00 to a one year roadside service contract (the "motor
26 club"). Mr. Villanueva never agreed to purchase such a contract

1 but believed, based on Westside's representations, that the motor
2 club was included in the policy.

3 48. As a standard practice, Westside requires insureds
4 to complete a "Confirmation of Coverage" (the "Confirmation")
5 form. This form contains several provisions that insureds can
6 either accept or reject in obtaining coverage.

7 49. Item 12 of the Confirmation includes the motor club
8 which the insured has no option to reject.

9 50. Westside's practice requires its employees to use a
10 "Sales Presentation Script" that provides in part that the policy
11 package includes the motor club. Sales persons are not
12 instructed to inform insureds that the motor club costs extra or
13 that the insured could reject the motor club.

14 51. To date, Mr. Villanueva has not received the
15 insurance he paid for, his 1994 accident has not been covered
16 because United Southern rejected the application as fraudulent
17 and he never received a refund of the \$446.00 in premium he paid
18 to Westside.

19 Count IV

20 52. On or about May 14, 1995, Westside received a
21 \$95.00 cash down payment from Richard Smith ("Smith") for an
22 automobile insurance policy through Viking Insurance Company
23 ("Viking").

24 53. Subsequently, Westside issued Smith an ADOT card
25 listing Viking as the insurer with an effective date of May 15,
26 1995.

1 54. Westside's Agency Appointment with Viking
2 terminated on June 27, 1994. Thus, on May 14, 1995, Westside
3 lacked authority to bind or collect premiums for any business on
4 behalf of Viking.

5 55. Westside and McFadden failed to forward Smith's
6 vehicle information and premium to Viking.

7 56. To date, Smith has not received the insurance he
8 paid for, or a refund from Westside.

9 Count V

10 57. On or about April 7, 1995, Westside received a
11 \$625.00 cash payment from Margarito Velasquez for sixth months
12 coverage on Velasquez' leased vehicle. Westside had Velasquez
13 complete two applications. One through United Southern for
14 liability coverage and one through U.S.A. Insurance Company
15 ("U.S.A.") for comprehensive and collision coverage. The premium
16 that would have been required to institute these two policies was
17 \$550.00.

18 58. Even though Velasquez paid cash in full, Westside
19 created finance contracts and financed both policies, sending an
20 initial downpayment of \$79.00 to United Southern and \$85.00 to
21 U.S.A.

22 59. At that same time, Westside gave Velasquez an ADOT
23 card showing the insurer to be AZSTAR Casualty Company
24 ("AZSTAR"). AZSTAR had been taken into receivership by the
25 Department of Insurance November 19, 1992 and was not authorized
26 to accept new business in Arizona after that date.

1 60. On or about April 28, 1995, Four Corners, on behalf
2 of United Southern, issued Velasquez a cancellation notice for
3 failure to respond to an underwriting inquiry.

4 61. On or about May 21, 1995, Dwight issued Velasquez a
5 cancellation notice for non-payment of premium. The payment had
6 been due May 5, 1995.

7 62. Velasquez speaks Spanish. Westside's telephone
8 information recording is in both Spanish and English. When
9 Velasquez attempted to contact Westside regarding the
10 cancellation notices Westside employees refused to speak with
11 Velasquez claiming they could not understand him.

12 63. To date, Velasquez has not received the insurance
13 he paid for, nor has he received a refund from Westside.

14 Count VI

15 64. On or about May 15, 1995 Westside received a
16 \$200.00 check through Chapman Chevrolet from Joanne Garcia for
17 insurance coverage through United Southern on the vehicle Ms.
18 Garcia purchased from Chapman May 15, 1995.

19 65. On or about June 7, 1995 Garcia's brother was
20 involved in an automobile accident while driving a loaner car
21 provided to Garcia by Chapman Chevrolet while her recently
22 purchased automobile was in their care for repair.

23 66. On or about June 21, 1995, Westside forwarded by
24 facsimile to Four Corners Insurance Agency, the managing general
25 agent for United Southern, the application Westside had completed
26 on May 15, 1995 and a receipt showing a down payment by Garcia of

1 \$121.00. Westside never forwarded any premium to Four Corners.

2 67. United declined coverage due to the lapse of
3 Westside's 72 hour binding authority.

4 68. To date, Garcia has not received the insurance she
5 paid for, the June 7, 1995, accident has not been covered, and
6 Garcia never received a refund of the premium she paid to
7 Westside.

8 VIOLATIONS

9 69. Respondents' conduct described above constitutes a
10 record of dishonesty in business or financial matters under
11 A.R.S. § 20-290(B)(2).

12 70. Respondents' conduct described above constitutes
13 the existence of any cause for which original issuance or any
14 renewal of an insurance license could have been refused such that
15 Respondents' licenses may be suspended or revoked under A.R.S.
16 § 20-316(A)(1), together with 20-290(B)(2).

17 71. Respondents' conduct described above constitutes a
18 wilful violation of, or wilful noncompliance with, any provision
19 of A.R.S. Title 20 or any lawful rule, regulation or order of the
20 Director, within the meaning of A.R.S. § 20-316(A)(2).

21 72. Respondents' conduct described above constitutes
22 misappropriation, conversion or illegal withholding of monies
23 belonging to policyholders, insurers, beneficiaries or others, in
24 violation of A.R.S. § 20-316(A)(4).

25 73. Respondents' conduct described above constitutes a
26 conduct of affairs under his license showing him to be

1 incompetent or a source of injury and loss to the public or any
2 insurer, in violation of A.R.S. § 20-316(A)(7).

3 74. The conduct described above constitutes unfair and
4 deceptive trade practices within the meaning of A.R.S. § 20-442.

5 75. The conduct described above constitutes
6 misrepresentation in the sale of insurance within the meaning of
7 A.R.S. § 20-443.

8 76. By issuing ADOT cards containing information which
9 was untrue, deceptive or misleading, Respondent violated A.R.S.
10 § 20-444(A).

11 77. Respondent diverted or attempted or conspired to
12 divert the monies of an insurer, reinsurer, entity licensed to
13 transact insurance business in this state or other person in
14 connection with the transaction of insurance or reinsurance, in
15 violation of A.R.S. § 20-463(A)(4)(a).

16 78. Based upon the conduct described above, and
17 pursuant to A.R.S. § 41-1064(C), the public health, safety and
18 welfare imperatively requires emergency action in the form of the
19 summary suspension of Respondents' Arizona insurance licenses,
20 effective immediately, pending the proceedings for revocation
21 commenced this date.


22 WHEREFORE, if after hearing, or upon default in
23 accordance with A.A.C. R20-6-106, the Director makes a finding of
24 one or more of the above-described violations, he may suspend,
25 revoke or refuse to renew the Respondents' insurance licenses,
26 impose civil penalties upon Respondents, and order restitution,

1 pursuant to A.R.S. §§ 20-316(A), 20-316(B) and 20-316(C).

2 Pursuant to A.R.S. § 20-150, the Director delegates all
3 authority, powers, duties and functions, whether ministerial or
4 discretionary, vested in the Director of Insurance of the State
5 of Arizona, whether implied or expressed, to LEWIS KOWAL to act
6 as administrative law judge in this matter. This delegation of
7 authority shall continue until specifically revoked.

8 Persons with disabilities may request reasonable
9 accommodations such as interpreters, alternative formats, or
10 assistance with physical accessibility. Requests for
11 accommodations must be made with 72 hours prior notice. If you
12 require accommodations, please contact Chris Crawford (912-8454)
13 or Richard Brinton (912-8460).

14 EFFECTIVE THIS 27th day of July, 1995.

15
16 
17 CHRIS HERSTAM, Director
18 Arizona Department of Insurance

19 COPY of the foregoing mailed this
20 27th day of July, 1995, to:

21 Kathryn Leonard
22 Assistant Attorney General
23 1275 West Washington, Room 259
24 Phoenix, Arizona 85007
25
26

1 Charles R. Cohen, Deputy Director
Gregory Y. Harris, Executive Assistant Director
2 John Gagne, Manager, Investigations
Arnold Sniegowski, Investigator
3 Donna Futrell, Investigator
Maureen Catalioto, Supervisor
4 Department of Insurance
2910 North 44th Street, Suite 210
5 Phoenix, Arizona 85018

6 Douglas McVay
Attorney at Law
7 3550 N. Central, Suite 1701
Phoenix, AZ 85012-2114
8 Attorney for Respondents

9 David Lewis McFadden
7622 N. 49th Avenue.
10 Glendale, AZ 85301

11 David Lewis McFadden
7501 N. 35th Avenue
12 Phoenix, AZ 85051

13 Westside Insurance Agency
7501 N. 35th Avenue
14 Phoenix, AZ 85051

15 A courtesy copy of this Notice of Hearing has been
mailed/delivered to the persons listed below. If you are listed
16 below, you will receive no further notices or documents concerning
this matter other than the Director's final order. Information
17 about the status of this matter, including whether the hearing date
has been changed, may be obtained by contacting the Department of
18 Insurance at (602) 912-8454 or the Assistant Attorney General
identified above, at (602) 542-3702.

19 Mark Flynn, Flynn Cable
20 1023 E. Firbrook
Mesa, AZ 85203

21 Fred L. Wilkes, Project Manager
22 CableWorks, Inc.
P.O. Box 83978
23 Baton Rouge, LA 70884-3978

24 Cody Dorman
4903 W. Thomas #148
25 Phoenix, AZ 85031

1 Richard Smith
6564 S. Van Buren
2 Tucson, AZ 85706

3 Leon Eguia, Branch Manager
Colorado Casualty Insurance Company
4 4141 N. Scottsdale Road, Suite 310
Scottsdale, AZ 85251

5 Joyce McNealy
6 Commercial Underwriting Supervisor
Century-National Insurance Company
7 P.O. Box 3999
North Hollywood, CA 91609-9990

8 American Equity
9 8370 E. Via De Ventura, Bldg. K
Scottsdale, AZ 85258

10 Clarendon National Insurance Co.
11 P.O. Box 5619
Diamond Bar, CA 91765-7619

12 Century-National Insurance Co.
13 P.O. Box 3999
N. Hollywood, CA 91609

14 Empire Fire & Marine
15 1624 Douglas Street
Omaha, NE 68102

16 Farmers Insurance Company
17 18444 N. 25th Avenue
Phoenix, AZ 85023

18 Franklin Life & Disability
19 Franklin Square
Springfield, IL 62713

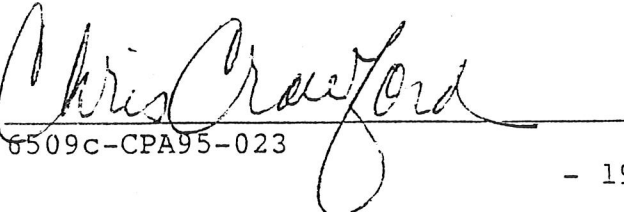
20 Guaranty National
21 P.O. Box 3329
Englewood, CO 80155

22 Massachusetts General Life Insurance Co.
23 7887 E. Bellview Avenue
Englewood, CO 80111

24 Safeway Insurance Co.
25 500 S. Racine Avenue
Chicago, IL 60685

26

1 Sutter Insurance Company
P.O. Box 6000
2 Larkspur, CA 94977-6000
3 United Pacific
4 4 Penn Center Plaza
Philadelphia, PA 19103
5 United Southern Assurance Co.
P.O. Box 2648
6 Melbourne, FL 32902-2648
7 Viking Insurance Company
P.O. Box 5365
8 Madison, WI 53705-0365
9 Cathy Geist
Technical Associate
10 Agency Licensing
Viking Insurance Company
11 P.O. Box 1080
Freeport, Illinois 61032
12 Lisa McAlduff
Underwriting Manager
13 Safeway Insurance Company
P.O. Box 22078
14 Tempe, AZ 85258-2078
15 Greg Bovyn
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